

1 UNITED STATES DISTRICT COURT
 2 EASTERN DISTRICT OF NORTH CAROLINA
 3 EASTERN DIVISION

4 UNITED STATES OF AMERICA, - Docket No. 4:20-cr-115-FL-1
 5 Plaintiff, - New Bern, North Carolina
 6 v. - June 14, 2022
 7 PATRICK FEDAK, - Arraignment
 8 Defendant. -

9
 10 TRANSCRIPT OF ARRAIGNMENT
 11 BEFORE THE HONORABLE LOUISE WOOD FLANAGAN
 12 UNITED STATES DISTRICT JUDGE.

13 APPEARANCES:

14 For the Plaintiffs: United States Attorneys' Office
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19 For the Defendant: Federal Public Defender
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Proceedings recorded by mechanical stenography,
 transcript produced by notereading.

1 (Commenced at 12:27 p.m.)

2 THE COURT: Mr. Fedak returns now with a
00:00:03 3 plea agreement, and the Court dispenses with the Rule 17
00:00:09 4 conference and turns its attention to a change of plea.

00:00:15 5 Is that the posture, counsel?

00:00:18 6 MS. BRENNAN: Yes, Your Honor.

00:00:19 7 THE COURT: So I've been given a plea
00:00:21 8 agreement where he proposes to plead guilty to Count
00:00:24 9 One, that being the crime beginning in or about December
00:00:28 10 of 2017, and continuing to on or about December 3 of
00:00:35 11 2019, in this district and elsewhere, that Patrick Fedak
00:00:39 12 did willfully and knowingly embezzle, purloin, and steal
00:00:43 13 property of the United States, that is, various articles
00:00:47 14 belonging to the United States military, of a value
00:00:50 15 exceeding \$1,000, with intent to convert said property
00:00:55 16 to his own use, in violation of a law recorded at Title
00:00:59 17 18 of the Code at Section 641.

00:01:02 18 And the government stands ready to dismiss
00:01:05 19 the counts related to the stolen firearms described in
00:01:10 20 Count Two and the obstruction count in Count Three at
00:01:16 21 sentencing.

00:01:16 22 So this really kind of puts Mr. Fedak back
00:01:19 23 in the place that he was originally when he entered into
00:01:22 24 his first plea agreement; is that fair, Ms. Kocher?

00:01:26 25 MS. KOCHER: In terms of the -- to what he

00:01:28 1 is pleading to, yes, Your Honor.

00:01:30 2 THE COURT: We don't undo the conduct, but
00:01:33 3 it's what he proposed to plead guilty to originally?

00:01:39 4 MS. KOCHER: That is correct.

00:01:40 5 THE COURT: You've heard the Court say
00:01:41 6 before, you face not more than ten years in prison, a
00:01:44 7 fine not to exceed a quarter of \$1 million, or both a
00:01:49 8 fine and the term of imprisonment. You could be
00:01:51 9 supervised for not more than three years; not more than
00:01:55 10 two years imprisonment if there was to be a revocation
00:01:58 11 of that term of supervised release. Restitution could
00:02:00 12 well be an issue; I think it probably is. And there's a
00:02:05 13 \$100 special assessment.

00:02:06 14 And in the plea agreement the defendant
00:02:07 15 agrees to make restitution as required, to forfeit
00:02:12 16 certain property. And you have agreed to give up or
00:02:17 17 lose some very valuable civil rights.

00:02:19 18 It's not the best copy of a plea agreement
00:02:23 19 that I've seen, but I think I can make it out.

00:02:26 20 Would you raise your right hand, Mr. Fedak,
00:02:28 21 and the clerk will administer an oath to you.

00:02:31 22 THE CLERK: Please state your name.

00:02:34 23 THE WITNESS: Patrick James Fedak.

00:02:38 24 (Whereupon the Defendant was sworn by the
00:02:45 25 clerk.)

00:02:45 1 THE COURT: Do you understand this is a
00:02:47 2 felony offense, it's very serious, and you've got the
00:02:53 3 right to a trial by jury?

00:02:56 4 THE DEFENDANT: Yes, Your Honor.

00:02:56 5 THE COURT: So if I accept your plea you're
00:02:58 6 giving that up. Do you understand that?

00:03:00 7 THE DEFENDANT: Yes, Your Honor.

00:03:01 8 THE COURT: The purpose of this hearing is,
00:03:02 9 as you're familiar with, is just to confirm you
00:03:05 10 understand what you're charged with. And I've read to
00:03:09 11 you Count One. Do you understand what you're charged
00:03:12 12 with?

00:03:12 13 THE DEFENDANT: I do, Your Honor.

00:03:13 14 THE COURT: And that you understand the
00:03:14 15 possible penalties? And I've read to you what they are.
00:03:18 16 Do you have any questions about that?

00:03:20 17 THE DEFENDANT: No, Your Honor.

00:03:20 18 THE COURT: And you understand what you're
00:03:21 19 giving up by pleading guilty?

00:03:25 20 THE DEFENDANT: Yes, Your Honor.

00:03:25 21 THE COURT: So let me just lay out some
00:03:28 22 groundwork. At points in time I'm going to ask you some
00:03:32 23 questions. I'm also going to ask you: Are you being
00:03:35 24 truthful and honest? I've got to make sure that you
00:03:38 25 understand what's happening here and that you're going

00:03:40 1 forward and offering me a guilty plea of your own free
00:03:43 2 will.

00:03:48 3 THE DEFENDANT: Yes, Your Honor.

00:03:49 4 THE COURT: Do you have any reason to
00:03:51 5 question his competency, counsel?

00:03:53 6 MS. BRENNAN: I do not, Your Honor.

00:03:54 7 THE COURT: Have you taken any medicine or
00:03:56 8 drunk any alcohol in the last couple days?

00:04:00 9 THE DEFENDANT: Just my normal prescribed
00:04:01 10 medicine, ma'am.

00:04:03 11 THE COURT: Do those normal prescribed
00:04:05 12 medicines make it hard for you to hear or understand?

00:04:07 13 THE DEFENDANT: No, Your Honor.

00:04:08 14 THE COURT: Ms. Kocher, do you have any
00:04:10 15 reason to question his competency?

00:04:13 16 MS. KOCHER: I do not, Your Honor.

00:04:14 17 THE COURT: I think you're capable and
00:04:15 18 competent. I think you've demonstrated that along the
00:04:21 19 way. So I go forward on that basis.

00:04:28 20 Have you had enough time to talk with your
00:04:50 21 attorney to be ready for the proceedings today?

00:04:53 22 THE DEFENDANT: Yes, Your Honor.

00:04:55 23 THE COURT: How do you wish to plead to
00:04:57 24 Count One?

00:04:58 25 THE DEFENDANT: Guilty, Your Honor.

00:05:07 1 THE COURT: Do you understand if you violate
00:05:09 2 a term or condition of supervised release that may find
00:05:12 3 you going back to prison?

00:05:14 4 THE DEFENDANT: I do, Your Honor.

00:05:14 5 THE COURT: And if I accept your plea, I'm
00:05:18 6 going to adjudge you guilty of Count One, and you may
00:05:21 7 lose some very valuable civil rights. Any questions
00:05:25 8 about that?

00:05:26 9 THE DEFENDANT: None, Your Honor.

00:05:26 10 THE COURT: Now, the sentencing process,
00:05:27 11 I'll just remind you, nobody knows how this case is
00:05:30 12 going to turn out; not me, not your attorney. There
00:05:36 13 are a lot of steps that have to unfold. And so if your
00:05:40 14 lawyer's told you how she thinks the case is going to
00:05:44 15 go, it's her best guess based on her considerable
00:05:47 16 knowledge, understanding, and experience. But in no
00:05:52 17 way is that a guarantee as to what the advice of the
00:05:55 18 guidelines will turn out to be or what sentence the
00:05:57 19 Court will impose. Do you understand that?

00:05:59 20 THE DEFENDANT: I do, Your Honor.

00:05:59 21 THE COURT: And so I do have to consider the
00:06:03 22 advice of the guidelines. I'm not bound by them, but I
00:06:06 23 have to consider them. And that includes giving you or
00:06:08 24 the government a chance to object to the proposals of
00:06:11 25 the probation office. And that usually takes about 90

00:06:15 1 days, a little bit less, to unfold. And then the Court
00:06:20 2 has to, with benefit of that advice -- which I don't
00:06:23 3 even need to think is reasonable at that time, it
00:06:26 4 depends -- but I have to fashion a sentence that's
00:06:29 5 sufficient but not greater than necessary that reflects
00:06:33 6 on a lot of sentencing factors, among them is the need
00:06:37 7 to discourage this type of conduct and to promote
00:06:39 8 respect for the law. Any questions about that process?

00:06:46 9 THE DEFENDANT: No, Your Honor.

00:06:47 10 THE COURT: And you're under oath, and if
00:06:49 11 you answer any question falsely, I just have to ask, do
00:06:52 12 you understand that your false answer could later be
00:06:55 13 used against you?

00:06:56 14 THE DEFENDANT: I do, Your Honor.

00:06:57 15 THE COURT: All right. So I'm holding up
00:06:59 16 in my right hand this plea agreement that I've made
00:07:01 17 reference to, and there are some pretty complicated
00:07:04 18 words and phrases in here. Did you read it before you
00:07:07 19 signed it?

00:07:08 20 THE DEFENDANT: I did, Your Honor.

00:07:09 21 THE COURT: Okay. Did you understand
00:07:12 22 everything in here before you signed it?

00:07:15 23 THE DEFENDANT: I was explained it, yes,
00:07:18 24 ma'am, Your Honor.

00:07:19 25 THE COURT: So what was explained to you in

00:07:22 1 some part at some point in time is there are waivers in
00:07:26 2 here of your right to appeal. And these waivers are
00:07:28 3 generally effective. Did you know that?

00:07:30 4 THE DEFENDANT: I was made aware, Your
00:07:32 5 Honor.

00:07:32 6 THE COURT: Good. Does this plea agreement
00:07:35 7 represent in its entirety any and all understandings and
00:07:39 8 agreements you have with the government? What I want
00:07:44 9 to know is: Is there some other promise out there that
00:07:47 10 isn't in here?

00:07:49 11 THE DEFENDANT: No, Your Honor.

00:07:49 12 THE COURT: Okay. So nobody's made any
00:07:51 13 other different promises to you in an effort to get you
00:07:54 14 to come to New Bern today and tell me you want to plead
00:07:57 15 guilty?

00:07:58 16 THE DEFENDANT: No, Your Honor.

00:07:58 17 THE COURT: Good.

00:08:00 18 Anybody forced you to do this?

00:08:03 19 THE DEFENDANT: No, Your Honor.

00:08:04 20 THE COURT: So you're doing it of your own
00:08:05 21 free will because you're, in fact, guilty?

00:08:09 22 THE DEFENDANT: Yes, Your Honor.

00:08:09 23 THE COURT: One day I won't have to say
00:08:11 24 this, because it's been a long time, but right now I
00:08:13 25 still have to tell you there's no parole in the federal

00:08:16 1 system. It's been abolished, and you don't get out on
00:08:19 2 parole. Do you understand that?

00:08:22 3 THE DEFENDANT: Yes, Your Honor.

00:08:22 4 THE COURT: Okay. So if I ultimately accept
00:08:25 5 your plea, you can't take it back.

00:08:28 6 THE DEFENDANT: Understood.

00:08:30 7 THE COURT: You're still presumed innocent.
00:08:35 8 The burden is still on the shoulders of the government
00:08:37 9 to prove you guilty beyond a reasonable doubt. The way
00:08:40 10 the government does that is by calling in to court
00:08:43 11 witnesses who would testify in front of the jury, you,
00:08:47 12 and me, from the witness stand. And you or your
00:08:50 13 attorney would have the right to ask those people
00:08:52 14 questions. You've also got the right to exercise
00:08:56 15 something called the subpoena power to make people come
00:09:00 16 into this room to provide testimony in support of your
00:09:04 17 defense. And you've got the right to take the witness
00:09:06 18 stand if you want to. You don't have to, because
00:09:09 19 you've got that guaranteed right to remain silent. And
00:09:13 20 if you decided to exercise it, I would look at the jury
00:09:16 21 and tell them: No decision with respect to this man's
00:09:24 22 guilt can be drawn from his decision to remain silent.
00:09:29 23 That's his right. You can't talk about it in the jury
00:09:32 24 room when you're deliberating. You can't talk about it
00:09:35 25 when you're arriving at your verdict. It's his right

00:09:38 1 to exercise that. And he is presumed innocent until
00:09:42 2 proven guilty.

00:09:44 3 But if I accept your plea, all of those
00:09:47 4 rights are going to go away because you're going to have
00:09:50 5 to admit what you did.

00:09:52 6 Now, is there any other information or
00:09:56 7 advice that you want before you go forward?

00:09:59 8 THE DEFENDANT: I don't think so, Your
00:10:02 9 Honor.

00:10:02 10 THE COURT: Have you been truthful in all of
00:10:04 11 your answers?

00:10:05 12 THE DEFENDANT: I have, Your Honor.

00:10:05 13 THE COURT: Okay. If the government went
00:10:07 14 forward on Count One, it would be required to prove
00:10:11 15 beyond a reasonable doubt that you embezzled in or about
00:10:19 16 December 2017 through December 2019, or stole,
00:10:26 17 purloined, or knowingly converted to your own use or the
00:10:30 18 use of another any record, voucher, money, or thing of
00:10:35 19 value valued in excess of \$1,000, and you did so
00:10:41 20 knowingly and willfully.

00:10:51 21 So if you went to trial, Ms. Kocher, with
00:10:54 22 respect to that count, what would you be prepared to
00:10:56 23 prove beyond a reasonable doubt?

00:10:58 24 MS. KOCHER: Your Honor, using various paper
00:11:01 25 documents and forms, some with Mr. Fedak's own

00:11:05 1 signature, emails from his government email account,
00:11:10 2 voicemails that he left, testimony of persons who have
00:11:16 3 direct knowledge and had interaction with Mr. Fedak, the
00:11:20 4 government would show the following:

00:11:22 5 GSAXcess.gov is an internet site for the
00:11:28 6 Federal Excess Personal Property Utilization Program
00:11:31 7 operated by the General Services Administration. A
00:11:34 8 federal agency can report excess personal property for
00:11:38 9 transfer by GSA to other Federal and State agencies as
00:11:43 10 well as search for and obtain excess property. Any
00:11:44 11 office within a federal agency that has unneeded
00:11:47 12 property can declare that property as excess to that
00:11:51 13 agency's need and can be reported to -- that property
00:11:54 14 can be reported to GSA for transfer to other agencies.
00:11:58 15 Agencies can report this excess property either
00:12:01 16 electronically on GSAXcess or on paper forms. The
00:12:07 17 forms, if done that way, must be signed and approved by
00:12:10 18 the agency allocating the property, the agency receiving
00:12:14 19 the property, and the regional GSA Area Property
00:12:18 20 Officer. The agencies then coordinate the shipping and
00:12:21 21 transportation of the property once the transfer is
00:12:24 22 official.

00:12:24 23 In this case the Naval Criminal
00:12:27 24 Investigative Service was called to investigate when a
00:12:32 25 squadron on board Marine Corps Air Station Cherry Point

00:12:33 1 had found inventory sheets reflecting receipt of over
00:12:37 2 \$43,000 of what they believed to be Colt M16 rifles in
00:12:41 3 October of 2019 but which had never been entered in the
00:12:44 4 supply system. The investigation revealed that those
00:12:47 5 items were the iron sights for Colt M16s, not the
00:12:52 6 weapons themselves; however, as a result of that,
00:12:54 7 additional equipment was noted to be missing.

00:12:57 8 Ultimately the investigation of those items
00:13:00 9 that I mentioned at the outset demonstrate that between
00:13:02 10 December of 2017 and December of 2019, this defendant
00:13:06 11 worked as a ground supply officer on board Cherry Point
00:13:09 12 Marine Corps Air Station. The ground supply officers
00:13:13 13 lead and train marines in coordinating the equipment and
00:13:17 14 material for mission requirements. They supervise the
00:13:19 15 purchasing and contracting of supplies, manage budgets,
00:13:22 16 and develop spending plans. As part of his official
00:13:24 17 duties, Fedak obtained a GSAXcess user identification
00:13:29 18 and had permission to search, select, and approve
00:13:31 19 transfers of other agencies' equipment to Marine Corps
00:13:35 20 Air Station Cherry Point. He was able to obtain a
00:13:38 21 number of things for his unit through this process, new
00:13:41 22 workstations, for instance, and other upgrades of
00:13:43 23 equipment. However, he also ordered and took custody
00:13:46 24 of numerous iPhones, random equipment like a generator,
00:13:51 25 MacBooks, binoculars, and other things, which he then

00:13:54 1 pawned, gave to coworkers for their personal use, or
00:13:57 2 disposed of in other fashions. He even obtained a
00:14:01 3 Mercedes GLK 350 SUV, and he involved his father in
00:14:06 4 driving to meet him in California where the vehicle was
00:14:08 5 located, loaded on a trailer, and took it or had it
00:14:12 6 taken back to his father's home in Texas. This
00:14:16 7 defendant ultimately claimed that he had lost the title
00:14:19 8 for it. And, of course, the title to that government
00:14:21 9 vehicle would have been retained by the government at
00:14:23 10 that point. Obtained a lost title and sold the
00:14:27 11 vehicle, benefitting financially from that.

00:14:31 12 And while he did improperly benefit
00:14:34 13 financially, of grave concern is the disposition of many
00:14:38 14 of the 66 firearms that he also requisitioned, only 20
00:14:43 15 of which have been located or recovered at this time.

00:14:46 16 And that, Your Honor, would be the
00:14:47 17 government's evidence had it gone to trial on Count One.

00:14:52 18 THE COURT: Thank you.

00:14:55 19 Mr. Fedak, did you, as charged in Count One,
00:14:58 20 willfully and knowingly steal property of the United
00:15:03 21 States, that is, articles belonging to the U.S. military
00:15:06 22 with a value exceeding \$1,000 with the intent to convert
00:15:10 23 that property to your own use?

00:15:13 24 THE DEFENDANT: Not the military, but the
00:15:14 25 federal government, yes, ma'am.

00:15:21 1 THE COURT: Well, what do you all want to do
00:15:23 2 about that?

00:15:28 3 MS. KOCHER: I'm sorry; I didn't hear.

00:15:31 4 The agent had called my attention to a
00:15:33 5 mistake in my factual proffer. The vehicle was returned
00:15:37 6 to Arizona, not Texas.

00:15:38 7 THE COURT: Okay. Well, let's focus on
00:15:46 8 this, Mr. Fedak. Let me ask you one more time. With
00:15:48 9 respect to Count One, it charges you with Beginning in
00:15:51 10 or about December of 2017, and continuing to on or about
00:15:57 11 December 3rd of 2019, did you willfully and knowingly
00:16:04 12 embezzle, purloin, and steal property of the United
00:16:11 13 States, that is, various articles belonging to the
00:16:15 14 United States military, with a value exceeding \$1,000,
00:16:21 15 with the intent to convert that property to your own
00:16:25 16 use, in violation of that law recorded at Title 18 of
00:16:30 17 the Code, Section 641?

00:16:34 18 MS. BRENNAN: Your Honor, I think the reason
00:16:35 19 he's making the distinction regarding the property
00:16:38 20 belonging to the U.S. military, for example, the car
00:16:41 21 that they referenced at issue was actually in the
00:16:45 22 custody and control of the Border Patrol Agency. The
00:16:49 23 firearms were --

00:16:51 24 THE COURT: Let me just ask you this --
00:16:54 25 let's put all that to the side. Let's look at what

00:16:56 1 he's charged with. Did he do that with property
00:17:01 2 belonging to the United States military?

00:17:04 3 THE DEFENDANT: No. There was no property
00:17:06 4 of the military. It was all federal government, ma'am.
00:17:09 5 I think those are two separate entities. So the
00:17:12 6 military is the Marine Corps, Army, Navy, Air Force.
00:17:15 7 There was no property on GSA that belonged to the
00:17:21 8 military. It belonged to the federal government.

00:17:21 9 MS. BRENNAN: It belonged to other federal
00:17:23 10 government agencies. I would note in his plea
00:17:25 11 agreement it actually does not include the language
00:17:27 12 "United States military." It simply says a thing of
00:17:34 13 value belonging to the United States and was in excess
00:17:37 14 of \$1 million, which I believe he would -- I'm sorry,
00:17:43 15 \$1,000, which I believe he would readily admit he did.

00:17:46 16 THE DEFENDANT: Yes, Your Honor.

00:17:49 17 MS. KOCHER: The government's position, Your
00:17:51 18 Honor, would be when he requisitioned using his
00:17:54 19 identification on behalf of Marine Corps Air Station
00:17:58 20 Cherry Point, it became military property. And once he
00:18:01 21 received it and used it for his own good, he was
00:18:04 22 stealing United States military property.

00:18:07 23 THE COURT: Okay.

00:18:21 24 MS. BRENNAN: Your Honor, I believe in some
00:18:24 25 ways it's a distinction without a difference because I

00:18:28 1 do believe the statute charges theft of government
00:18:31 2 property, regardless of the agency that it belongs to.
00:18:34 3 I understand the way the indictment is worded, and I
00:18:37 4 certainly understand that interpretation, because he was
00:18:41 5 using a requisition system belonging to the military.

00:18:47 6 THE COURT: The military didn't want that
00:18:49 7 Mercedes, didn't need that Mercedes, but when he did
00:18:52 8 what he did, it's Ms. Kocher's theory that it became the
00:18:55 9 property of the military.

00:18:58 10 MS. KOCHER: Yes.

00:18:59 11 MS. BRENNAN: As opposed to being a theft
00:19:03 12 from the Border Patrol Agency, it would be a theft from
00:19:06 13 the military. Either way, Your Honor, I believe it's a
00:19:08 14 theft from the United States government.

00:19:09 15 THE COURT: Let's look at the plea
00:19:11 16 agreement. Count One: Theft of government property.
00:19:14 17 I'm going to ask you three questions here. The first
00:19:17 18 question is:

00:19:18 19 Mr. Fedak, did you embezzle, steal, purloin,
00:19:22 20 or knowingly convert to your own use or the use of
00:19:25 21 another any record, voucher, money, or thing of value?

00:19:31 22 THE DEFENDANT: Yes, Your Honor.

00:19:31 23 THE COURT: Second question: The record,
00:19:34 24 voucher, money, or thing of value, did it belong to the
00:19:37 25 United States, and was it valued in excess of \$1,000?

00:19:40 1 THE DEFENDANT: Yes, Your Honor.

00:19:41 2 THE COURT: And a third and final question
00:19:42 3 is: Mr. Fedak, are you guilty of Count One?

00:19:45 4 THE DEFENDANT: Yes, Your Honor.

00:19:45 5 THE COURT: All right. I'm satisfied with
00:19:47 6 your answers here today. I think you've come forward
00:19:50 7 to plead guilty to Count One knowingly, voluntarily,
00:19:53 8 understanding the consequences of the guilty plea.
00:19:56 9 Nobody's forced you to do this; nobody has made any
00:19:59 10 promises other than what's in the plea agreement.
00:20:01 11 You're doing this of your own free will. And moreover,
00:20:04 12 there's a factual basis to support your plea. So
00:20:07 13 today, sir, I adjudge you guilty of Count One of the
00:20:11 14 superseding indictment.

00:20:14 15 I set your sentencing for about three months
00:20:17 16 from now. We'll get you on the docket and give you a
00:20:22 17 notice, both sides, notice of that.

00:20:26 18 And if anybody thinks there's a complicated
00:20:29 19 issue coming my way, it benefits you and your client to
00:20:33 20 advance that in writing. File your brief not later than
00:20:36 21 seven days before the sentencing hearing.

00:20:38 22 And if the defendant wants the Court to
00:20:40 23 consider any certificates or letters of reference or
00:20:44 24 recommendation or other personal information that you
00:20:50 25 think will bear on fashioning a sentence, I welcome you

00:20:54 1 to send that. And again, I would just require that it
00:20:59 2 not be filed any later than seven days before the
00:21:04 3 sentencing date so that I certainly have time to read
00:21:07 4 it.

00:21:09 5 Now, I hope things have been going well in
00:21:11 6 Greensboro. I haven't had any problems of late brought
00:21:14 7 to my attention.

00:21:16 8 From the probation office's perspective, is
00:21:18 9 there anything to report?

00:21:20 10 THE PROBATION OFFICER: No, Your Honor.

00:21:22 11 THE COURT: We have our very diligent
00:21:23 12 third-party custodian here. Anything to report from
00:21:26 13 your end?

00:21:29 14 MR. CHAMBERS: No, Your Honor. Just
00:21:30 15 absolutely fantastic.

00:21:32 16 THE COURT: Great. That's great to hear.

00:21:35 17 MS. BRENNAN: Your Honor, he does have one
00:21:37 18 request. I did speak to Mr. Chambers about this.
00:21:41 19 Currently his conditions are home detention, which means
00:21:47 20 he's restricted to his residence. He has to provide a
00:21:50 21 weekly work schedule, and he has to give 72 hours of
00:21:53 22 notice if he's going to go anywhere other than to the
00:21:57 23 brick and mortgager shop and home. While he is working
00:22:01 24 in the shop, they get a lot of calls to go actually do
00:22:05 25 services in people's homes. Mr. Chambers would very

00:22:08 1 much like to be able to take him with him to assist him
00:22:12 2 there. Under the current conditions he's not allowed
00:22:15 3 to do that. If the conditions were switched to a
00:22:18 4 curfew from, say, 7:30 a.m. to 9:00 p.m., then he would
00:22:25 5 be allowed to go as he needed to do during those hours
00:22:29 6 and would simply have to be home at night from 9:00 p.m.
00:22:34 7 until 7:30 in the morning. The other option would be
00:22:38 8 to remove electronic monitoring altogether.

00:22:42 9 In speaking to Mr. Chambers, he says
00:22:44 10 whenever he would go on these service calls, he would be
00:22:47 11 actually accompanying Mr. Fedak to any of these
00:22:52 12 meetings, or any of this work.

00:22:56 13 Your Honor, we would appreciate if the Court
00:22:59 14 was willing to do some type of modification at this time
00:23:02 15 to his conditions.

00:23:04 16 THE COURT: It's so your client can always
00:23:07 17 be in the company of Mr. Chambers, but go and service
00:23:12 18 someone's residence at 8:30 at night?

00:23:19 19 MR. CHAMBERS: Perhaps if we explain what we
00:23:22 20 do.

00:23:26 21 THE COURT: The court reporter is
00:23:27 22 struggling. Why don't you come up here and sit next to
00:23:31 23 Mr. Fedak.

00:23:38 24 MR. CHAMBERS: What we do at Valor Active
00:23:40 25 Group/Valor Outdoor Power Equipment right now is mainly

00:23:45 1 service, repair, sell outdoor power equipment.

00:23:49 2 Everything from sailboats, riding lawnmowers,

00:23:51 3 commercial --

00:23:52 4 THE COURT: I thought you were running a
00:23:54 5 hardware store.

00:23:56 6 MR. CHAMBERS: We do that too. And Patrick
00:24:00 7 has been an asset. The proposal for the draft of
00:24:06 8 acquisition is already sent to financing or to the
00:24:10 9 financier. It's looking good. We do a lot. We assist
00:24:15 10 veterans in our community. But I am on call. I don't
00:24:20 11 care if it's 2:00 a.m. Now, I wouldn't want to put that
00:24:24 12 on Pat right now. We do generators, everything. I
00:24:28 13 grew up fixing this stuff at ten years old. I've even
00:24:33 14 done gyroscopic stabilizers on yachts, which if you
00:24:38 15 fail, make a mistake, you're going to die; a big-time
00:24:43 16 machine is going to crush you. It can be a very hard
00:24:46 17 job. It's exhilarating, though. I've trained him.
00:24:50 18 He's already set a new standard in the shop. I'd take
00:24:55 19 ten more of him.

00:24:56 20 THE COURT: Okay. All right. Well, let's
00:24:59 21 look over at Ms. Kocher's way, and maybe behind her is
00:25:03 22 the probation officer.

00:25:04 23 Do you have any problems with that? I'll
00:25:11 24 start with the probation officer, just to sort of hear
00:25:14 25 her thoughts.

00:25:16 1 THE PROBATION OFFICER: Thank you, Your
00:25:17 2 Honor. He has been in full compliance, but he's also
00:25:20 3 only been on electronic monitoring for three months.
00:25:26 4 Typically what I see with pretrial defendants, if
00:25:29 5 they've been on for a significant period of time, then
00:25:32 6 it might be considered to modify the conditions to
00:25:37 7 something a little bit less restrictive. Since he's
00:25:40 8 been in compliance, I wouldn't say our office would
00:25:44 9 necessarily have an objection to it. But also, he's
00:25:47 10 doing very well, as they've mentioned; and sometimes if
00:25:51 11 it's not broke, why fix it, is kind of the idea.

00:25:59 12 THE COURT: What's his current curfew or
00:26:04 13 hours of operation, I suppose?

00:26:06 14 THE PROBATION OFFICER: He's on home
00:26:07 15 detention, which basically means that the probation
00:26:10 16 officer can allow him leave time from the residence for
00:26:13 17 certain purposes, but he doesn't have a specific
00:26:16 18 timeframe.

00:26:16 19 THE COURT: I'm remembering an appreciation
00:26:20 20 of how early he had to go to work from one of our last
00:26:23 21 hearings. I'm thinking I understood the hours of
00:26:27 22 operation of the business. What were they?

00:26:30 23 THE PROBATION OFFICER: I believe how he's
00:26:31 24 been doing it, my understanding from the officer that's
00:26:34 25 supervising him in the Middle District is that he just

00:26:37 1 makes sure that he has his schedule from work and that
00:26:41 2 he's allowed to go to work at the time that he needs to
00:26:44 3 be there and home when he needs to be home. And then
00:26:47 4 he's just verifying his employment. I do understand he
00:26:50 5 only had one day off in the month of May, so he is
00:26:53 6 working every single day. Then he does give him some
00:26:56 7 out time to do some other things that he needs to do
00:27:00 8 like the grocery store and laundromat.

00:27:04 9 THE DEFENDANT: Your Honor, I have to submit
00:27:05 10 a schedule every Friday for the following week. And
00:27:08 11 then I have to follow that up with a phone call to
00:27:10 12 approve my schedule. If I have any changes to that
00:27:13 13 schedule, I have to do it 72 hours in advance;
00:27:17 14 otherwise, it's denied. And I'm allowed to put in
00:27:20 15 there time to go to the grocery store. However, the
00:27:22 16 time at the end, whatever time -- if I get off work at
00:27:26 17 17:30, and I put the grocery store from 5:30 to 6:30 or
00:27:31 18 7:30, if I'm not back in the house at 7:30, regardless
00:27:35 19 of what happens, then I'm in this violation of curfew.

00:27:38 20 THE COURT: Well, you're working awfully
00:27:40 21 hard. Why would you want to go out and work at 8:00
00:27:43 22 or 9:00 at night?

00:27:45 23 THE DEFENDANT: 8:00 or 9:00 at night
00:27:47 24 included from the time I got off work, if I needed to go
00:27:48 25 to the grocery store or something like that, I was

00:27:50 1 allowing myself to build that into my schedule.

00:27:55 2 MS. BRENNAN: Your Honor, he's only allowed
00:27:56 3 to go from the home to the store, the store he's work
00:27:59 4 working. So if he -- if there was a job at 2:00 in the
00:28:04 5 afternoon, he couldn't leave the brick and mortar
00:28:07 6 location and go do that. It's a very limited -- very
00:28:16 7 constricting set of conditions. In fact, when he comes
00:28:21 8 to visit me, we have to -- he has to get the prior
00:28:25 9 approval, and we have to send an email to his probation
00:28:28 10 officer saying he, in fact, met with us from X time to Y
00:28:33 11 time. A curfew would achieve a lot of the same goals.
00:28:38 12 He would still be on monitoring, but he would have a
00:28:43 13 little bit more freedom as to what he could do for
00:28:45 14 employment during those hours, and also would have a
00:28:48 15 little bit more freedom if his kids had an event that
00:28:53 16 maybe he didn't know about in advance and his wife were
00:28:55 17 willing to allow him to go to that. It would still
00:29:00 18 provide the Court with all the same monitoring
00:29:03 19 abilities, but it would really lessen the burden on both
00:29:08 20 him and probation.

00:29:11 21 THE COURT: Okay. Ms. Kocher?

00:29:14 22 MS. KOCHER: Your Honor does recall the
00:29:16 23 detention hearing in the case and how strongly the
00:29:19 24 government was encouraging detention. That followed
00:29:25 25 what the government alleges was obstruction of justice

00:29:28 1 with the hiding and burying of guns.

00:29:34 2 As I noted earlier in the proceeding, there
00:29:36 3 are still 46 guns that we do not know the whereabouts
00:29:41 4 of. Now, the plea agreement -- I hope and expect to
00:29:46 5 have that information shortly. I think this motion is
00:29:49 6 precipitous to that extent. We are concerned about the
00:29:53 7 possibility of ongoing obstruction. Once we have the
00:29:57 8 opportunity to retrieve those guns, it may be that the
00:30:01 9 government's position will change. But for today, I
00:30:04 10 feel very strongly that the conditions remain the same.

00:30:07 11 I would note, Your Honor, that two options I
00:30:12 12 heard were given to you. It seems to me, although the
00:30:15 13 government is opposed to it at this point, but there is
00:30:18 14 a third option, and that would just be to allow the
00:30:22 15 employer to define the work setting other than that
00:30:31 16 brick and mortar building, as long as the employer is
00:30:35 17 with him at the time. I think that probation can allow
00:30:37 18 that if the employer and third-party custodian stays in
00:30:41 19 touch with probation and let's them know: We've got a
00:30:45 20 thing at 2:00 this afternoon, and I'm with him, and
00:30:47 21 we're going here; rather than messing with the home
00:30:51 22 detention or the curfew, which has worked for three
00:30:54 23 months.

00:30:55 24 THE COURT: Okay. So it may be just best to
00:31:01 25 leave this one alone. But you've been told that the

00:31:03 1 government is more than willing to think about expanding
00:31:09 2 kind of what your work parameters are, reasonably.
00:31:18 3 I've also heard the defendant saying this would let him
00:31:21 4 just go to a children's ball game or some kind of a
00:31:24 5 performance over the summer that the invitation or the
00:31:27 6 opportunity comes up at the last minute. I am not
00:31:30 7 really sure how it would structure that.

00:31:34 8 MS. BRENNAN: Would the Court be willing to
00:31:38 9 specifically note that he is allowed to, within the
00:31:43 10 confines of employment, visit various job sites during
00:31:47 11 the day in the company of the third-party custodian? I
00:31:50 12 think if that specific instruction was given to the
00:31:53 13 probation office, I believe that would be clear enough
00:31:55 14 that during the hours that he reports he's working, he
00:32:00 15 would have the ability to go from the brick and mortar
00:32:04 16 location.

00:32:04 17 THE COURT: It's making these house calls?
00:32:09 18 I think we can work that out, don't you?

00:32:11 19 THE PROBATION OFFICER: Yes, I believe that
00:32:12 20 that won't be a problem, Your Honor.

00:32:13 21 THE COURT: Rather than me trying to draft
00:32:15 22 the language, I think you all can get together, try to
00:32:19 23 sort something out, and give me a proposed form of an
00:32:24 24 order that would amend the current conditions of
00:32:28 25 release.

00:32:30 1 And neither side -- well, I can tell you
00:32:33 2 you're not going to get everything you want, but you can
00:32:35 3 get something.

00:32:37 4 MS. BRENNAN: Understood, Your Honor. And
00:32:40 5 I guess the only other thing that we would potentially
00:32:45 6 like included is his understanding under the "other
00:32:47 7 activities" section, the way the probation office in the
00:32:51 8 Middle District reads it does not include visits --
00:32:57 9 taking his children places or going to see his
00:32:59 10 children's ball games or other activities. Would it be
00:33:04 11 possible to specifically include that as being one of
00:33:07 12 the other activities that he is permitted to do?

00:33:11 13 THE COURT: Our probation officer is
00:33:14 14 listening to this. I'm sure she's going to be talking
00:33:17 15 to her counterpart in the Middle District. There may
00:33:20 16 be some things of which I'm not aware. We don't -- what
00:33:23 17 we don't want to do is set you up to fail. We don't
00:33:26 18 want to end up crafting something that urges you to push
00:33:30 19 it to the limit, and you find that you violated the
00:33:33 20 terms and conditions of supervised release. You could
00:33:36 21 lose a lot of good things that come a defendant's way
00:33:43 22 when they've been on release and have complied. And it
00:33:47 23 seems like the government is also waiting for a very
00:33:52 24 important debrief. So I think that might be something
00:33:54 25 that needs to be done. But I'm open to looking at what

00:33:59 1 you all can agree on. And if you can't agree on
00:34:03 2 everything that you think is vital, you can make the
00:34:05 3 appropriate motion, and I could probably come up with a
00:34:08 4 telephone hearing. But I'd like to sort of stay out of
00:34:15 5 this at this point and try to -- I don't think I'm in a
00:34:18 6 position to put a fine period on every sentence. I
00:34:22 7 think you've got to talk to your counterpart in the
00:34:25 8 Middle District. But I know that you will work to try
00:34:28 9 to give as much appropriate latitude to the defendant as
00:34:32 10 is possible.

00:34:35 11 So you're doing okay? You're not being
00:34:39 12 overworked, huh?

00:34:42 13 THE DEFENDANT: Work is very well. I just
00:34:45 14 feel like it's restricted based on the intent and the
00:34:48 15 mission of Valor Active Group. We make it work as best
00:34:54 16 we can. And I share my counterpart's concerns with the
00:34:59 17 fact of: Hey, there's -- we're getting restricted as a
00:35:04 18 company, as a group to assist veterans and, you know,
00:35:10 19 disabled people, especially at their homes. But I
00:35:13 20 understand the Court's decision. I have no complaints.

00:35:16 21 THE COURT: I think that part is going to
00:35:18 22 get worked out.

00:35:22 23 THE DEFENDANT: Well, I spoke with the
00:35:24 24 parole office. He said it's black and white under the
00:35:27 25 orders of the home restriction that it is not

00:35:29 1 authorized. He recommended -- or he didn't recommend;
00:35:32 2 he asked that I ask about just being on curfew.

00:35:37 3 THE COURT: I'm amenable to it. Let's just
00:35:40 4 go ahead and see what it looks like on paper. You and
00:35:43 5 your lawyer and the government work to try to come up
00:35:47 6 with something that both sides believe is workable and
00:35:50 7 in your best interest, and then submit that to me in
00:35:53 8 seven days' time, how about that, if not sooner. If
00:35:59 9 it's reasonable, I'm going to sign off on it. Okay?

00:36:02 10 THE DEFENDANT: Yes, ma'am.

00:36:03 11 THE COURT: Just keep it up.

00:36:06 12 MR. CHAMBERS: Your Honor, I'm very serious
00:36:09 13 about this. But even if nothing that he's requested or
00:36:13 14 his attorney -- please don't laugh. I just request that
00:36:17 15 I can take him to see the movie Maverick in IMAX. I'm
00:36:23 16 being very serious. If we can fit that in. We asked;
00:36:26 17 we requested. It's an important movie for us. We
00:36:30 18 look it -- I'm not trying to be smart. We really want
00:36:34 19 to go see Maverick.

00:36:36 20 THE COURT: Who's in Maverick?

00:36:38 21 THE DEFENDANT: It's the new --

00:36:40 22 THE COURT: Oh, I've seen that.

00:36:45 23 MR. CHAMBERS: The new one, Top Gun.

00:36:47 24 THE COURT: Okay. You can go to Maverick,
00:36:49 25 the early show. Write that into the order. Okay.

00:36:53 1 MR. CHAMBERS: Thank you, Your Honor.

00:36:55 2 THE COURT: I think you'll enjoy it.

00:36:57 3 We're going to be at ease or in recess until

00:37:01 4 2:00.

5 (Concluded at 1:04 p.m.)

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7

8 **C E R T I F I C A T E**

9

10 I certify that the foregoing is a correct transcript
11 from the record of proceedings in the above-entitled
12 matter.

13

14 /s/ Tracy L. McGurk_____

____3/31/2023____

15 Tracy L. McGurk, RMR, CRR

Date

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